DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 97-128
	)	
MARTIN W. HOFFMAN,	)	
Trustee-in-Bankruptcy for Astroline	)	File No. BRCT-961101LG
Communications Company Limited	)	
Partnership	)	
	)	
For Renewal of License of	)	
Station WHCT-TV, Hartford, Connecticut	)	
	)	
SHURBERG BROADCASTING OF HARTFORD	)	File No. BPCT-831202KF
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 18, Hartford, Connecticut	)	

TO: The Commission

OPPOSITION OF SHURBERG BROADCASTING OF HARTFORD TO "MOTION FOR WAIVER AND APPLICATION FOR REVIEW"

HARRY F. COLE

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

October 6, 1997

1. Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("SBH") hereby opposes the "Motion for Waiver and Application for Review" ("Motion") filed in the above-captioned proceeding by Richard Ramirez. In his Motion Mr. Ramirez claims to be seeking review of an interlocutory decision of the ALJ. [1/] But Mr. Ramirez's Motion largely ignores the ALJ's decision and that decision's discussion of the procedural and substantive flaws in Mr. Ramirez's argument. As set forth below, no basis exists for the relief sought by Mr. Ramirez.

2. Of course, what Mr. Ramirez is really seeking here is reconsideration of the Hearing Designation Order ("*HDO*"), FCC 97-146, released April 28, 1997, in this proceeding. According to Mr. Ramirez, the Commission should not have designated this case for hearing and the Presiding Judge should have aborted the proceeding notwithstanding the *HDO*. The Presiding Judge had no authority to reconsider or review the correctness of an HDO. To the very limited extent that any relief from an HDO may be available, such relief must be obtained from the authority which issued the HDO in the first place. [2/] Since Mr. Ramirez was asking the Presiding Judge for substantive relief which the Presiding Judge was powerless to provide, the Presiding Judge correctly rejected Mr. Ramirez's request. [3/]

[1/] Such review is prohibited by the Commission's own rules absent leave, by the Presiding Judge, to seek such review. Section 1.301(b). The ALJ specifically denied such leave. *See* Order, FCC 97M-158 (released September 17, 1997).

[2/] Of course, the Commission's rules make clear that petitions for reconsideration of an HDO will not normally be entertained. *See* Section 1.106(a)(1).

[3/] Mr. Ramirez's initial petition to the ALJ also suffered from the fact that that petition was grossly late, without any apparent justification, as the Presiding Judge correctly concluded. Mr. Ramirez has still not provided any justification for his lateness. And to the extent that he was late in challenging the *HDO* (albeit in the wrong forum) before the ALJ in July, 1997 -- three months after the *HDO* was issued -- he is even more late in trying to bring his challenge before the Commission now in September, 1997, two months later.

3. But even if Mr. Ramirez's latest pleading is treated as a much-belated petition for reconsideration of the *HDO*, it ***still*** falls far short of its intended mark. The record of this case as it has been developed thus far is set out in some detail in SBH's Opposition to Mr. Ramirez's "Petition for Emergency Relief and Stay of Proceedings", a copy of which is included as Attachment A hereto. That Opposition is incorporated herein by reference.

4. According to Mr. Ramirez, the instant hearing is unnecessary because all of the matters which have been designated for hearing by the Commission have already supposedly been resolved by the Bankruptcy Court in *In re Astroline Communications Company Limited Partnership* ("*Astroline*"), 188 B.R. 98, 100 (Bkrtcy. D. Conn. 1995). But Mr. Ramirez's claim is plainly and demonstrably false.

5. Contrary to Mr. Ramirez's claims, the opinion of Bankruptcy Judge Krechevsky did ***not*** resolve ***any*** of the legal questions which are at issue here. According to Judge Krechevsky, the question before him was one arising under the Massachusetts Limited Partnership Act and the Bankruptcy Code, ***not*** the Commission's policies. *Astroline* at 103. That question was whether any limited ACCLP partner(s) had in fact "participat[ed] in the control of ACCLP" in a manner "substantially the same as the exercise of the powers of a general partner". *Id.* Neither the Commission nor its policies are mentioned in Judge Krechevsky's opinion except in very brief (and non-substantive) passing.

6. The question designated by the Commission in the instant hearing is substantially different from that addressed by Judge Krechevsky. Here the question is whether ACCLP in fact complied with the ***Commission's*** policies relative to limited partnerships and whether ACCLP lied to the Commission and the Courts when it represented that ACCLP did so comply. Judge Krechevsky's conclusion was governed by Massachusetts

partnership law; by contrast, the instant case must be governed by Commission policies which are plainly distinct from -- and significantly stricter than -- state partnership law.

7. The distinctions between state partnership law and the Commission's own rules and policies relative to the treatment of partnerships are clear. The Commission's willingness to accord preferential regulatory treatment to limited partnerships is based on the understanding that, in a bona fide limited partnership, the supposedly limited partners are purely passive, with no capacity for involvement in the partnership's business. *E.g.*, *Minority Ownership of Broadcasting*, 92 FCC2d 849, 854, 52 R.R.2d 1301 (1982); *Ownership Attribution*, 58 R.R.2d 604 (1985); *Family Media, Inc.*, 59 R.R.2d 165, 166-67, n. 4 (Rev. Bd. 1985). The Commission's analysis thus addresses not merely the question of whether or not a supposedly limited partner has ***actually*** exercised control (*i.e.*, the question before Judge Krechevsky), but whether that limited partner has the ***potential*** to exercise such control. *E.g.*, *Atlantic City Community Broadcasting, Inc.*, 8 FCC Rcd 4520 (1993); *Gloria Bell Byrd*, 7 FCC Rcd 7976 (Rev. Bd. 1992), *aff'd*, 8 FCC Rcd 7126 (1993); *Family Media*, *supra*, 59 R.R.2d at 166-67, n. 4 [4/].

8. This factor alone distinguishes the instant case from the bankruptcy case. Judge Krechevsky, observing that "[t]here is a critical distinction between the ***actual*** exercise of control and the ***potential*** to exercise control", *Astroline* at 105 (emphasis in original), was looking specifically for ***actual*** exercise of control sufficient to trigger liability under

---

[4/] In *Byrd*, for example, the mere authority to sign a limited partnership's checks -- whether or not that authority was ever exercised -- was deemed to undermine the bona fides of a claimed limited partnership. (Here, the record demonstrates that the owners of ACCLP's limited partner not only had check-signing authority, but they did in fact sign checks; indeed, ACCLP's checkbook was physically maintained ***not*** by Mr. Ramirez in Hartford, but by employees of the limited partner in that partner's Massachusetts offices.)

Massachusetts partnership law. His decision was not at all dependent on whether (and if so, the extent to which) limited partners held the ***potential*** to exercise control or other matters relevant to the Commission's own rules and policies. *See, e.g., Family Media, Inc., supra.* Judge Krechevsky's inquiry relative to partnership liability -- an inquiry governed by conventional, non-Commission, Massachusetts law -- is not in any way dispositive of the issue designated by the Commission. Mr. Ramirez's claims to the contrary are at best disingenuous, at worst affirmatively misleading.

9. Another distinct element of the Commission's analysis of limited partnerships (particularly in the distress sale context) is the precise nature and extent of the supposed general partner's actual interest in the partnership. In order to comply with the Commission's minority distress sale policy, at least 20% of ACCLP had to be owned by a minority, *Minority Ownership of Broadcasting, supra*, so for Commission purposes the actual level of Mr. Ramirez's ownership is absolutely crucial. But the focus of Judge Krechevsky's concern was merely whether the supposedly limited partners' actual "participation in the control of [ACCLP] was substantially the same as the exercise of the powers of a general partner." *Astroline*, 188 B.R. at 103. As a result, the precise quantification of Mr. Ramirez's interest was ***completely irrelevant*** to Judge Krechevsky.

10. Not surprisingly, in his pleading to the ALJ, Mr. Ramirez inaccurately claimed that the Bankruptcy Court "extensively considered the issue of whether [he] retained his 21% ownership interest". Ramirez Petition at 12. He continues chanting that misleading

mantra in his motion to the Commission. Ramirez Motion at 1, 4. [5/] But Mr. Ramirez's ensuing elaboration on that claim contains no citations whatsoever to Judge Krechevsky's decision. And, indeed, review of Judge Krechevsky's decision does ***not*** disclose ***any*** discussion of the question of Mr. Ramirez's quantitative interest -- because that question was fundamentally irrelevant to the bankruptcy proceeding. [6/]

11. That is ***not*** the case here, however. ACCLP claimed for some six years -- before the Commission, the Court of Appeals and the Supreme Court -- that it complied with the Commission's minority distress sale policy. In order to comply with that policy, at least 20% of ACCLP had to be owned by a minority. *Minority Ownership of Broadcasting*, *supra*. Thus, the quantification of Mr. Ramirez's interest ***is*** a factor of major independent significance here before the Commission, even though it was ***not*** a matter of any significance before the bankruptcy court.

[5/] Mr. Ramirez states that the Bankruptcy Court "specifically found that Ramirez held 21% of ACCLP". Motion at n. 7. But, characteristically, Mr. Ramirez offers no citation to the Bankruptcy Court's opinion. At 188 B.R. 101, Judge Krechevsky did observe that "***[a]t the Debtor's [i.e., ACCLP's] inception***, Ramirez held a 21 percent ownership interest" (emphasis added). But Judge Krechevsky did ***not*** address the fact that, even before SBH's appeal of the Commission's grant of ACCLP's distress sale application had been argued before the Court of Appeals (in January, 1986), the ACCLP partnership agreement had been revised to provide that Mr. Ramirez was entitled to less 1% of the partnership's profits, losses and distributions until the limited partners had been repaid all of their capital contributions, plus a return on those contributions. *See, e.g.*, Exhibit F to Mr. Ramirez's Motion. Nor did Judge Krechevsky address the fact that, in its own Federal tax returns for 1985-1987, ACCLP reported that Mr. Ramirez's ownership share, far from being 21%, was approximately 0.75%.

[6/] Mr. Ramirez suggests that the lack of any discussion, in Judge Krechevsky's decision, of the reduction of Mr. Ramirez's ownership interest is an indication that there was no such reduction. *See* Motion at n. 7. The more likely explanation for that lack of discussion is that, as discussed above, the particular quantum of Mr. Ramirez's interest was irrelevant to Judge Krechevsky's deliberations.

12. As noted above, the evidence of record demonstrates that ACCLP reported to the Internal Revenue Service from 1985-1988 that Mr. Ramirez's ownership interest in ACCLP was less than 1%. Mr. Ramirez has attempted to sidestep this by claiming that the "IRS returns . . . simply reflected the tax allocation" of profits, losses and cash flow which had been recommended by ACCLP's accountants. Ramirez Petition at 13. But that "explanation" proves that ACCLP was ***not*** in compliance with Commission standards.

13. In *Pacific Television, Inc.*, 62 R.R.2d 653 (Rev. Bd. 1987), an applicant purported to be a limited partnership in which the sole general partner, a woman, was said to own 20% overall equity (representing 100% voting interest), while the white male limited partner was said to own 80% equity interest and zero voting interest -- a claimed structure remarkably like ACCLP's claimed structure. But as it turned out, the limited partnership agreement featured a "subordination" agreement pursuant to which the "general" partner would hold only a 1% equity interest until the limited partner received a "full payout" of his contributed capital. 62 R.R.2d at 654-656; *see also* Initial Decision (unreported), FCC 86D-43 (released July 2, 1986) at ¶¶11-14. [7/]

[7/] In *Pacific*, the supposed 20% partner was accorded only a 1% share in the income, expenses and distributions of the partnership until the limited partner had received repayment of 100% of his contributed capital. This is similar to the arrangement set forth in the December 31, 1985 amendment to the ACCLP partnership agreement, in which Mr. Ramirez was accorded only 0.70% of ACCLP's profits, losses and distributions until ACCLP's limited partners had recouped their capital contributions. But the ACCLP agreement required that, in addition, the limited partners receive a "return" on their capital contribution; no such additional payment was involved in *Pacific*. And while the *Pacific* limited partner had contributed only $20,000 (as compared to the general partner's $200), the ACCLP limited partners contributed at least $20,000,000 (as compared to Mr. Ramirez's $210). And finally, while the *Pacific* applicant had disclosed its partnership agreement to the Commission, it does not appear that ACCLP did so with respect to the December 31, 1985 amendment to its partnership agreement (which created the 99%/1% allocation).

14. The Review Board had no difficulty rejecting this purported structure as a "classic sham", 62 R.R.2d at 656, even though the supposed 20% general partner claimed (much as Mr. Ramirez now does) that she really did understand that she "owned a 20% interest in the equity, and believed that the 20 percent representation showed the 'true nature' of the ownership". Indeed, the Board went further to remark that the applicant's initial failure to promptly advise the Commission of the "subordination" provision "raises candor questions" which would prevent a finding that the applicant was basically qualified. *Id.* Here, it appears that ACCLP never (promptly or otherwise) disclosed the subordination provision of its partnership agreement, despite the fact that that provision was effective even before oral argument before the Court of Appeals in January, 1986. *See also, e.g., Praise Broadcasting Network, Inc.*, 8 FCC Rcd 5457, 5459, n.4 (Rev. Bd. 1993). [8/]

15. A further factor separating the bankruptcy proceeding from the instant Commission proceeding is the fact that the Commission's treatment of limited partnerships is based not on the metes and bounds of civil partnership law, but rather on broader public interest considerations which necessitate broader inquiry. The Commission's consideration of the bona fides of limited partnership arrangements will look beyond the boundaries of the

---

[8/] In *Praise*, the Review Board found the bona fides of a limited partnership in question where, *inter alia*, a supposedly controlling general partner supposedly holding a 20% equity interest in the overall limited partnership would receive only 5% of the partnership's profits and losses until the limited partner's capital contribution was repaid with interest. *See also, e.g., Saltaire Communications, Inc.*, 8 FCC Rcd 6284 (1993) (in corporate setting, where supposedly passive investors' "rights to earnings and assets leave the voting stockholder with little of value to offer as an inducement for capital contributions from new investors", the "passive" investors had power to influence the applicant's affairs); *Atlantic City Community Broadcasting, Inc.*, 8 FCC Rcd at 4520-21 (limited partnership not bona fide where consent of limited partners is required with respect to any and all borrowing; here, the ACCLP agreement (at Section 4.2) required limited partner consent before the general partner could mortgage or pledge the partnership's assets).

written partnership agreement and will consider, instead, whether the business relationship in question is "irreconcilable with sound business judgment", *Royce International Broadcasting*, 5 FCC Rcd 7063, 7065, n. 10 (1990) and *Evergreen Broadcasting Company*, 6 FCC Rcd 5599, 5602, ¶20 (1991); "far-fetched", *Mableton Broadcasting Company, Inc.*, 5 FCC Rcd 6314, 6318, ¶13 (Rev. Bd. 1990); or "unreal", *Byrd, supra*, 7 FCC Rcd at 7980, ¶13.

16. Comparison of these cases with the facts which are already established relative to ACCLP strongly supports the conclusion that the ACCLP structure was, in fact, an "unreal", "far-fetched" design completely inconsistent with "sound business judgment". In *Evergreen*, the supposedly passive investor had no previous relationship with the general partner -- just as the non-minority ACCLP investors had never met Mr. Ramirez until approximately two hours before they supposedly offered him a controlling general partnership interest in ACCLP. Also in *Evergreen*, the Commission found it incredible that any experienced investor would entrust exclusive managerial control to a person who would be making at most a nominal investment ($100) in the enterprise; here, ACCLP would have the Commission believe that the non-minority ACCLP principals entrusted a $20,000,000+ enterprise exclusively to Mr. Ramirez, whose personal investment was only $210. The Commission in *Evergreen* refused to believe that, under such circumstances, the supposedly passive investor had really "given away the store".

17. Similarly, for another example, in *Mableton*, a limited partnership was rejected where the general partner was a stranger to the limited partner until shortly before filing (as in ACCLP), where the basic arrangements had been made by the limited partners before the general partner joined (as in ACCLP), and where the general partner would be making no investment in the enterprise in return for her supposed 20% ownership interest (as in

ACCLP). The Review Board compared this situation with *Metroplex Communications, Inc.*, 4 FCC Rcd 8149 (Rev. Bd. 1989), *aff'd*, 5 FCC Rcd 5610 (1990), where the limited partners had "given away" a mere 4% equity share under similar circumstances. 5 FCC Rcd at 6318, ¶13. The Commission in *Metroplex* found that proposal "unworthy of credence". The Board, in *Mableton*, found the proposal to give a general partner a ***20%*** equity share "*a fortiori*, more far-fetched". *Id.* In the instant case, Mr. Ramirez was supposedly receiving a ***21%*** controlling interest -- putting it comfortably in the "more far-fetched" range.

18. Of course, none of this substantial Commission authority was addressed in ***any*** way in Judge Krechevsky's decision -- because it was not material to the issue before the bankruptcy court. As the ALJ observed in his decision below, "[i]t is clear that the Federal Courts did not decide all relevant matters regarding compliance with the Commission's minority distress sale policy." *MO&O* at ¶10. In view of all of the foregoing, it is crystal clear that, contrary to Mr. Ramirez's repeated, disingenously misleading claims, the matters of concern to the Commission have ***not*** been resolved. The *HDO* properly designated those matters for hearing, and no reason exists for reconsideration of that designation.

19. Mr. Ramirez also makes a pitch for some kind of emergency *Second Thursday* relief. *See* Motion at 5. The trouble with this pitch is that it ignores the unique gravity of this particular proceeding. This case involves misrepresentations made not only to the Commission, but also to the Court of Appeals and the Supreme Court. Indeed, ACCLP's misrepresentations were such that the Commission itself repeatedly relied on them in fashioning its own arguments to the Court of Appeals and the Supreme Court. This is not, then, similar to any case involving misrepresentations made to, and caught by, the

Commission before significant damage could be done. [9/] Rather, ACCLP's misconduct here constituted a serious threat to the integrity of both the administrative ***and*** judicial processes, not to mention the fundamental articulations of constitutional law which were affected by ACCLP's misrepresentations (and the Commission's unwitting acceptance of and reliance on those misrepresentations). [10/] No special relief can legitimately be accorded to ACCLP or Mr. Ramirez in these circumstances.

WHEREFORE, for the reasons stated, SBH submits that the "Motion for Waiver and Application for Review" must be denied.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

October 6, 1997

[9/] Morever, while, Mr. Ramirez seeks to invoke *MobileMedia*, the fact is that the applicant in that case, while apparently guilty of numerous misrepresentations in some applications, had nonetheless apparently complied with the rules in connection with many other applications. Here, by contrast, ACCLP's apparent misrepresentations went to the very core of ACCLP's ***only*** station acquisition.

[10/] Mr. Ramirez seems to assert that he as a minority has been and is being victimized at the hands of the Commission. Motion at 3. Frankly, it is the Commission, and the public, which have been victimized by Mr. Ramirez. The cause of "affirmative action", whatever its ultimate social merits may be, is undermined when opportunists seek to avail themselves of the benefits of "affirmative action" policies through shams and fronts such as ACCLP. Unfortunately, by withholding from the Commission important information concerning ACCLP's structure and operations, ACCLP managed to dupe the Commission into aiding and abetting ACCLP.

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 97-128
MARTIN W. HOFFMAN, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership	)	File No. BRCT-881201LG
For Renewal of License of Station WHCT-TV, Hartford, Connecticut	)	
SHURBERG BROADCASTING OF HARTFORD	)	File No. BPCT-831202KF
For Construction Permit for a New Television Station to Operate on Channel 18, Hartford, Connecticut	)	

TO: The Honorable John M. Frysiak
Administrative Law Judge

OPPOSITION OF SHURBERG BROADCASTING OF HARTFORD TO "PETITION FOR EMERGENCY RELIEF AND STAY OF PROCEEDINGS"

Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

August 5, 1997

TABLE OF CONTENTS

SUMMARY

The "Petition for Emergency Relief and Stay of Proceedings" must be denied. It is, in effect, nothing more than a petition for reconsideration of a hearing designation order ("HDO"). Such petitions are not authorized by the Commission's rules in circumstances such as the present case, see Section 1.106(a) of the Commission's Rules, and even if such a petition were authorized, it would not be properly filed with the Presiding Judge. The Presiding Judge has no authority to grant the relief requested by Mr. Ramirez's petition, and the petition should therefore be denied.

But even if the Presiding Judge were inclined to consider the substance of the petition, the petition would still have to be denied. The gist of the petition is that the matters designated for hearing in this case have already been disposed of in the bankruptcy court. That is wrong.

As is clear from Judge Krechevsky's opinion, the issue before the bankruptcy court was a narrow one relating not to any Commission rule or policy, but rather to questions of Massachusetts limited partnership law and the Bankruptcy Code. Those questions are completely distinct from the issues in the instant proceeding, which relate to the bona fides of the supposed limited partnership structure of Astroline Communications Company Limited Partnership under the rules, policies, and precedents of the Commission relating to limited partnerships. Those rules, policies and precedents are not

addressed anywhere in Judge Krechevsky's decision, because they were immaterial to his resolution of the narrow, non-Commission question before him. Accordingly, even if the Presiding Judge had the authority to reconsider an HDO issued by the full Commission, no basis for such reconsideration exists.

With respect to Mr. Ramirez's claim that some Second Thursday relief should be made available, it suffices to note that the Commission fully addressed precisely that question in the HDO, explaining the overriding importance and the unique circumstances presented here. Under these circumstances, that aspect of Mr. Ramirez's petition must be rejected as well.

1. Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("SBH") hereby submits its Opposition to the "Petition for Emergency Relief and Stay of Proceedings" filed in the above-captioned proceeding by Richard Ramirez. As set forth in detail below, even if the Presiding Judge were deemed, arguendo, to have the authority to take the extraordinary actions suggested by Mr. Ramirez, no basis whatsoever exists for such actions, with one exception. Further, while Mr. Ramirez's request for a temporary stay of this proceeding pending resolution of his pleading is similarly without merit, for the reasons (and subject to the limitations) set forth below, SBH believes that an extension of procedural dates herein may be salutary.

Preliminary Matters

2. As an initial matter, Mr. Ramirez's Petition is nothing more nor less than a petition for reconsideration of the Commission's hearing designation order ("HDO") commencing this proceeding. Essentially, Mr. Ramirez argues that the Commission should not have designated this case for hearing and that the Presiding Judge should somehow abort the proceeding notwithstanding the HDO. But the Presiding Judge has no authority to reconsider or review the correctness of an HDO. To the very limited extent that any relief from an HDO may be available, such relief would ordinarily be obtained only from the authority which issued the HDO in the first place. [1/] Since

[1/] Of course, the Commission's rules make clear that petitions for reconsideration of an HDO will not normally be entertained. See Section 1.106(a)(1).

Mr. Ramirez is thus asking the Presiding Judge for substantive relief which the Presiding Judge is powerless to provide, the Petition can and should be denied.

3. Ignoring this basic jurisdictional problem, Mr. Ramirez repeatedly claims that he could not have raised any objections to the HDO (or with respect to the matters discussed therein) at any earlier point. That is simply wrong. SBH's various pleadings have been a matter of public record, and had Mr. Ramirez been the least bit concerned, he could have obtained copies from the Commission, or from Martin Hoffman, trustee-in-bankruptcy for Astroline Communications Company Limited Partnership ("ACCLP"). [2/] But even if Mr. Ramirez was not sufficiently interested to seek out such copies, the fact is that, by letter dated January 30, 1997, the Commission put the world on notice that the full Commission was very concerned about the accuracy of ACCLP's representations to the Commission. See Attachment A hereto. That letter was issued publicly by the Commission and was referenced in the Commission's Daily Digest. It was no secret. The fact is that, notwithstanding the issuance of that letter in January, Mr. Ramirez did not seek to participate in these matters until May 29, 1997, a month after the HDO was issued, when he sought to intervene herein. And even after he

---

[2/] Since 1991, ACCLP has been in the hands of Mr. Hoffman as trustee. SBH served all pleadings on Mr. Hoffman in that capacity. At Footnote 2 to his Petition, Mr. Ramirez correctly points out that SBH has not served any post-1991 pleadings on Mr. Ramirez -- for the simple reason that SBH did not have to, since by then Mr. Hoffman, not ACCLP (or Mr. Ramirez), was the licensee.

was permitted to intervene (by Order of the Presiding Judge dated June 20, 1997), Mr. Ramirez waited yet another month before filing his Petition. In view of these circumstances, Mr. Ramirez's claims of previous inability to raise these questions are clearly unsupported and unsupportable. [3/]

4. And finally, contrary to Mr. Ramirez's apparent belief, the Commission was well aware of the decision of the bankruptcy court on which Mr. Ramirez relies. Two If By Sea Broadcasting Corporation ("TIBS"), another intervenor in this proceeding, twice provided copies of Judge Krechevsky's decision to the Commission -- once in February, 1997, in connection with TIBS's response to an SBH pleading in the Court of Appeals, and again on March 3, 1997, in connection with TIBS's petition for reconsideration of the January 30, 1997 letter ruling by the Commission. Thus, as of April 28, 1997 (the date of the HDO), the Commission was clearly on notice of Judge Krechevsky's decision. [4/]

[3/] It should also be pointed out that, while Mr. Ramirez bemoans the supposedly terrible burdens imposed on him by the instant proceeding, see, e.g., Petition at 8, the fact is that Mr. Ramirez himself voluntarily elected to seek party status herein. That is, far from being dragged kicking and screaming into this proceeding, Mr. Ramirez invited himself to the party. Having done so, he cannot credibly complain that the participation he himself sought out may impose some burden on him.

[4/] Mr. Ramirez is correct when he notes that SBH did not notify the Commission of Judge Krechevsky's decision. That is because, as set forth herein, SBH does not believe Judge Krechevsky's decision to be decisional with respect to any of the issues before the Commission. While the factual record underlying Judge Krechevsky's decision is in a number of respects

(continued...)

Background

5. ACCLP was an entity formed in 1984 in order to enable certain non-minority persons to take advantage of the Commission's minority distress sale policy. It is well-established [5/] that those non-minority persons, having failed to reach agreement with one minority person (one Joseph Jones) and facing what they perceived to be an imminent deadline, first met Mr. Ramirez during a two-hour meeting in late May, 1984 and then, after caucussing among themselves outside of Mr. Ramirez's presence for approximately one hour, offered him a general partnership position in ACCLP. See, e.g., In re Astroline Communications Company Limited Partnership ("Astroline"), 188 B.R. 98, 100 (Bkrtcy. D. Conn. 1995).

6. The record thus far developed establishes, at a bare minimum, that:

(a) ACCLP consistently claimed that Mr. Ramirez held a 21% ownership interest in ACCLP and was its controlling general

---

[4/] (...continued)
relevant hereto, the decision itself does not address the Commission's rules and policies (or ACCLP's compliance with those rules and policies), and thus SBH does not believe that it was required to provide copies of the decision to the Commission.

[5/] A number of factual issues relevant to the disposition of the question before the Presiding Judge in this case have already been addressed on the record in the Hartford bankruptcy proceeding concerning ACCLP. In view of Mr. Ramirez's strongly-articulated belief that that proceeding takes care of everything, Mr. Ramirez will presumably not quarrel with the evidence which was adduced in that proceeding, particularly since he himself was able to participate in the development of the record in the bankruptcy proceeding. As will be addressed later herein and contrary to Mr. Ramirez's repeated suggestions, SBH was NOT a party to the adversary bankruptcy proceeding, and thus SBH did NOT participate in the development of that record.

partner. But Mr. Ramirez's actual financial contribution to ACCLP amounted to only $210; by contrast, the non-minority participants contributed well in excess of $20,000,000.00 (Twenty Million Dollars). In federal tax returns filed between 1985-1988, Mr. Ramirez's "ownership interest" in ACCLP was stated to be less than one percent, a figure which was considerably more consistent with Mr. Ramirez's actual investment in ACCLP. See Attachment A hereto.

(b) from its formation in May, 1984 until late in 1988 (at which point ACCLP was placed into bankruptcy), there was no checkbook for any ACCLP account in the Hartford offices where Mr. Ramirez worked; rather, the ACCLP checkbooks were maintained in the non-minority participants' offices outside Boston. See, e.g., Astroline, supra, 188 B.R. at, e.g., 102. Signatories on ACCLP's accounts included four of ACCLP's non-minority, supposedly passive principals. See id. Those non-minority principals signed multiple checks on those accounts, including at least two of which appeared to be for the benefit of non-minority principals and without the knowledge of Mr. Ramirez. Id.

(c) all revenues received through operation of the station in Hartford were deposited into a "lock box account" in Hartford, from which they were automatically "swept" twice a week to an account in Boston, an account on which the four non-minority, supposedly passive principals were signatories and which those four signatories could empty without notice to or approval from Mr. Ramirez. Id. at 101, 106.

(d) Mr. Ramirez consulted with non-minority, supposedly passive principals of ACCLP on a wide variety of operational matters, including the programming to be broadcast on the station, the particular ACCLP accounts payable which were to be paid, and even the windows to be installed in the station's Hartford facility,. E.g., id. at 101-102. Virtually every expense of the station's operations was recorded on "transmittal" sheets which were sent, by station personnel (including Mr. Ramirez) in Hartford to the non-minority principals' offices outside Boston for review and preparation of checks. See Attachment B. Copies of transmittal sheets bear the initials and "OK" of at least one of ACCLP's non-minority principals. See Attachment C (initialled transmittals).

(e) In at least one document submitted to a bank, ostensibly in order to initiate a deposit and borrowing relationship for ACCLP, identified four non-minority persons, but not Mr. Ramirez, as the general partners of ACCLP. See Attachment D hereto.

7. Based on documents generally demonstrating the

foregoing facts, the Commission designated this proceeding for hearing on the question of whether ACCLP engaged in misrepresentation when it repeatedly held itself out -- to the Commission, the Court of Appeals and the Supreme Court -- as a bona fide minority-controlled limited partnership within the meaning of the Commission's policies.

8. Mr. Ramirez now quarrels with that designation, claiming that that issue has already been litigated. Mr. Ramirez is wrong.

Argument

9. According to Mr. Ramirez, the issue in this case has already been "fully litigated" in the adversary proceeding before the Bankruptcy Court. Ramirez Petition at, e.g., 7. But even casual review of the opinion of Judge Krechevsky, on which Mr. Ramirez places primary (if not sole) reliance, demonstrates that the focus of the bankruptcy proceeding was far more limited than Mr. Ramirez lets on. According to Judge Krechevsky, the question then before the court was one arising under the Massachusetts Limited Partnership Act and the Bankruptcy Code, not the Commission's policies. Astroline at 103. That question was whether any limited ACCLP partner(s) had in fact "participat[ed] in the control of ACCLP" in a manner "substantially the same as the exercise of the powers of a general partner". Id. Indeed, neither the Commission nor its policies are mentioned in Judge Krechevsky's opinion except in very brief (and non-substantive) passing.

10. The question in the instant hearing is substantially different from that addressed by Judge Krechevsky. Here the question is whether ACCLP in fact complied with the Commission's policies relative to limited partnerships and whether ACCLP lied to the Commission and the Courts when it represented that ACCLP did so comply. Judge Krechevsky's conclusion was governed by Massachusetts partnership law; by contrast, the instant case must be governed by Commission policies. Judge Krechevsky was concerned solely with questions of financial liability; by contrast, the instant case involves the truthfulness and candor of representations made to the Commission and the Courts. Judge Krechevsky's decision does not in any way, shape or form dispose of the issue designated herein by the Commission. [6/]

11. As a threshold observation, SBH is constrained to point out that, contrary to the repeated suggestion of Mr. Ramirez, SBH did NOT participate in the adversary proceeding in the bankruptcy action. It is therefore not at all true that the "allegations advanced by [SBH]" have been "thoroughly examined" or "fully addressed" in connection with that action. See, Ramirez Petition at, e.g., n. 2; 10; see also 9 (apparently referring to SBH as a "party" to the bankruptcy case). Nor, for that matter, is SBH

[6/] To be sure, the factual record developed before Judge Krechevsky may overlap the factual record to be developed with respect to the issues herein. But there are obviously additional facts which need to be developed here which were not addressed -- and which did not need to be addressed -- in the bankruptcy action. And the bottomline legal issue to be addressed herein is completely different from the legal issue before Judge Krechevsky.

subject to any "preclusion" doctrine limiting its ability to explore factual or legal issues herein; by contrast, the parties to the adversary bankruptcy proceeding are subject to such preclusion.

12. Without limiting its assessment of the proper scope of the issue in this case (pending further discovery), and solely for the purpose of the instant Partial Opposition, SBH offers the following observations concerning matters which are clearly at issue here, but which were, equally clearly, not addressed in the adversary bankruptcy proceeding.

13. The Commission's willingness to accord preferential regulatory treatment to limited partnerships is based on the understanding that, in a bona fide limited partnership, the supposedly limited partners are purely passive, with no capacity for involvement in the partnership's business. E.g., Minority Ownership of Broadcasting, 92 FCC2d 849, 854, 52 R.R.2d 1301 (1982); Ownership Attribution, 58 R.R.2d 604 (1985); Family Media, Inc., 59 R.R.2d 165, 166-67, n. 4 (Rev. Bd. 1985). The Commission's analysis thus addresses not merely the question of whether or not a supposedly limited partner has actually exercised control, but whether that limited partner has the potential to exercise such control. E.g., Atlantic City Community Broadcasting, Inc., 8 FCC Rcd 4520 (1993); Gloria Bell Byrd, 7 FCC Rcd 7976 (Rev. Bd. 1992), aff'd, 8 FCC Rcd 7126

(1993); Family Media, supra, 59 R.R.2d at 166-67, n. 4 [1].

14. This factor alone distinguishes the instant case from the bankruptcy case, for there Judge Krechevsky himself specifically noted that "[t]here is a critical distinction between the actual exercise of control and the potential to exercise control". Astroline at 105 (emphasis in original). Judge Krechevsky was looking specifically for actual exercise of control sufficient to trigger liability under Massachusetts partnership law. That inquiry is relevant to, but certainly not dispositive of, the inquiry which the Commission has mandated here. As the Review Board has noted, "legitimate limited partnership agreements may bestow upon limited partners powers which under the Commission's regulatory objectives would" preclude special treatment. Family Media, Inc., supra. In other words, the standards which apply to limited partnerships in a conventional, non-Commission, state law setting are different from the standards applied by the Commission in the implementation of its various policies. Thus, Judge Krechevsky's inquiry relative to partnership liability -- an inquiry governed by conventional, non-Commission, Massachusetts law -- is neither inconsistent with, nor in any way dispositive of, the issue designated by the Commission.

15. To be sure, the factual record compiled before Judge

---

[1] In Family, for example, the Review Board observed that, for Commission purposes, special treatment "for limited partnership interests only applies . . . where the limited partner in fact lacks the power to control or influence the affairs of the licensee." 59 R.R.2d at 167, n.4.